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B. Chamberlain

DEPUTY CLERK

IN THE SUPERIOR COURT OF STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

v.

STEVEN CARROLL DEMOCKER,

Defendant.

Cause No. P1300CR20081339

Division 6

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO PRECLUDE LATE
DISCLOSED EVIDENCE, WITNESSES
AND EXHIBITS FROM THE STATE'S 59-
62ND DISCLOSURES

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned, hereby submits its Response to Defendant's Motion to Preclude Late Disclosed Evidence, Witnesses and Exhibits from the State's 59-62nd Disclosures and asks that the Motion be denied. The State's position is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Yet again, Defendant's Motion is little more than a restatement of all the other motions to preclude or exclude witnesses and evidence that have been filed in this case. And as the State has acknowledged on numerous occasion, as required by Rule 15.6, the State has continued to make seasonal disclosure of new or different information in this case. Additional

1 review, additional testing and requests for additional information is necessary in order to
2 ensure that every possible avenue has been explored in the State's attempt to resolve all issues.

3
4 ***I. Interviews and Investigation of Verde Valley Jail***

5 The State learned only very recently what information Mr. Kalmbach possessed. The
6 Defendant made incriminating statements to Mr. Kalmbach, while both men were incarcerated
7 at the Yavapai County Jail in Camp Verde. Steven DeMocker admitted to Michael Kalmbach
8 that he rode his bicycle near the victim's home on the day of or the day before the murder of
9 Carol Kennedy. This statement is in direct conflict with earlier statements made by the
10 Defendant to police that his bicycle had not been near or at the Carol's house for years.
11 Furthermore the Defendant stated that had the bike been at or near Carol's house he was not
12 the person on the bike.
13

14
15 ***II. Additional Request for opinion from Eric Gilkerson and Late disclosed Gilkerson***
16 ***Exhibit.***

17 The exhibit in question is demonstrative of evidence that has already been disclosed to
18 the Defense and admitted by the Court. The shoes used in the exhibit were disclosed to the
19 Defense in the State's 50th Supplemental Disclosure dated March 17, 2010. The tread
20 impressions in the dirt were disclosed at the beginning of the case.
21

22 Once again the State must remind the Defense that it did not know about the shoes
23 until January 2010. The Sheriff's office acted quickly to investigate the newly discovered
24 information and disclosure was made after the investigation was completed.

25 On Friday April 30, 2010, the Defense interviewed Mr. Gilkerson, in person at FBI
26 headquarters in Quantico, Virginia. The interview lasted nearly three and a half hours. The

1 exhibit and report from Mr. Gilkerson that the Defense objects to was disclosed to the Defense
2 on April 15, 2010, two full weeks before they interviewed Mr. Gilkerson. It is unknown to the
3 State why the Defense did not mention this fact in their motion.

4 The State only came into possession of the shoes in March 2010. As soon as the
5 Defense requested, in April 2010, to obtain the shoes for their own examination their request
6 was complied with promptly.
7

8 The Court previously denied (Minute Entry dated April 13, 2010) the Defendant's
9 motion to preclude information on the La Sportiva shoe samples.

10 ***III. Forensically Enhanced Tire Tracks CD (6285)***

11 The photos of the tire tracks has been the subject of evidentiary hearings and litigation,
12 not the tire tracks themselves. The enhanced photos of the tire tracks were provided by
13 Sturchman laboratories. The State will not be using the enhanced photos /at trial.
14

15 ***IV. Mr. DeMocker's Statements (24 CDs)***

16 The 24 CDs were disclosed in the State's 59th Supplemental disclosure dated April 15,
17 2010. The State thought it best to disclose all the jail calls so that the Defense could not
18 complain that the State was withholding any potential exculpatory evidence.
19

20 Any statements the State would use from these calls would be presented in rebuttal.

21 In the Courts minute entry dated April 13, 2010, the Court directed the State to disclose
22 any additional jail recording statements it intends to use within 3 days of when the recording is
23 made or as soon as the State learns of them during the trial.

24 ***V. Late Disclosed Interviews (CD6291, 6292 and 6293)***

25 The interviews on these CDs were conducted by Sgt. Boelts of the Yavapai County
26 Sheriff's office. All of the interviews were digitally recorded and summarized in supplemental

1 reports by Sgt. Boelts. The interview of Mr. and Mrs. Girard was summarized in supplement
2 131, bates number 18909. The interviews with Mrs. Hanson and Mr. Dang were summarized in
3 supplement 128, bates number 18585- 18589. Sgt. Boelts encountered technical difficulties
4 when he tried to save the interviews to his computer. Sgt. Boelts provided the State with the
5 CD's of these interviews once the technical difficulties had been resolved.
6

7 There is no information of evidentiary value contained on any of the CD's or in the
8 summaries. The disclosure was made out of an abundance of caution under the State's
9 continuing obligation to investigate and disclose evidence.

10 **VI. Sorenson**

11 The Sorenson lab has highly sensitive equipment for DNA testing that the DPS crime
12 lab does not possess. Specific items were sent to Sorenson for testing to confirm DPS crime lab
13 results and to find out if Sorenson with this equipment would be able to detect any additional
14 DNA on items submitted for testing.
15

16 For the past several weeks the Defense has been actively interviewing witnesses from
17 Sorenson Lab. During some of these interviews the State and the Defense have discussed why
18 the Defenses expert was not present for the additional testing on items that were eventually
19 consumed during the testing process. Neither side has been able to figure out what happened.
20 The Defenses expert was present for the critical testing of the victims fingernails. There was no
21 malfeasance or bad faith by the State.
22

23 The additional testing has excluded the Defendant as a possible source for the unknown
24 DNA found underneath the victim's fingernails. The additional testing could not exclude James
25 Knapp as a source of the unknown DNA. This information is clearly exculpatory and the State
26 fails to see why the Defense would want to preclude evidence that is exculpatory to their case.

1 Since May 4, 2010 the State and the Defense have been conducting jury selection on
2 this case. During voir dire, approximately 60 of the potential jurors have been told about the
3 unknown DNA found under the victims fingernails and that it was not the Defendant's DNA.
4 At no time during this process has the Defense objected to the providing of this information
5 to each potential juror.
6

7 ***VII. Evidence Related to DR10-014516***

8 On April 17, 2010 the Yavapai County Sheriff's Office conducted a second search of
9 the area near the Hassayampa Golf Course where previously a dry bag belonging to the
10 defendant was located. Dpty. Roial Armstrong was a member of the search team.

11 Det. John McDormett wrote supplement 159, bates numbers 25150-25151 with details
12 of the search and Dpty. Armstrong's involvement in the search.
13

14 No evidence of evidentiary value was found during the April 17th search.

15 ***VIII. DPS Computer Forensics Report (23471-23490)***

16 On Friday May 7, 2010 the State provided the Defense with a copy of the Encase case
17 file.

18 The Defense has filed a more comprehensive motion to preclude Detective Page's
19 testimony and reports to which the State has responded.
20

21 ***IX. Cell Tower Information***

22 The cell tower information provided to the Defense was relied upon by the State's
23 expert, Sgt. Sy Ray, in forming his opinion about the location of James Knapp on the night of
24 the murder. Defense attorney John Sears interviewed Sgt. Ray on Friday April 23, 2010 and
25 questioned Sgt. Ray at length about his proposed testimony
26

1 The Defense is aware of what Sgt. Ray will testify about and the data he relied upon to
2 form his opinion. Sgt. Ray is a material witness to address the Defendant's late disclosed
3 defense of third party culpability.
4

5 **X. Bank Records for Carol Kennedy (25083-25097)**

6 The State diligently sought to find the financial institution that was in possession of the
7 financial documents that had been subpoenaed. The original subpoena was sent to Chase Bank
8 and they did not own the financial documents the State sought Chase Bank directed the State
9 to FistServe. FistServe provided the financial documents the State needed under a subpoenas.
10 After reviewing the documents the State inquired with FistServ about additional documents.
11 FistServ informed the State they did not have the documents the State sought and that the
12 documents would be with First USA Bank. The State issued a subpoena to First USA bank and
13 found out that First USA bank had been bought out by Chase Bank. The State went back to
14 Chase bank and inquired about the documents sought. Chase bank informed the State that
15 when they took over First USA Bank the documents the State sought had already been
16 destroyed when the takeover was commenced.
17
18
19

20 **XI. Jail Calls from May of 2009 (25098-25125)**

21 Statements made by the Defendant during these calls is not new information. In fact
22 the Defendant in many instances repeats what he has been stating since the beginning of the
23 case.
24

25 //

26 //

1 **XII. Sorenson Request (25154-25157)**

2 The note was submitted to rule out other DNA that may have been on the note. The
3 test result was showed only the victims DNA was on the note. The State finds this evidence has
4 no evidentiary value.
5

6
7 **CONCLUSION:**

8 The State respectfully requests that the Court deny Defendant's Motion to Preclude
9 Late Disclosed Witnesses, Evidence, Experts and Opinions from the State's 59-62nd
10 Supplemental Disclosure.
11

12 RESPECTFULLY SUBMITTED this 11th day of May, 2010.
13

14
15 Sheila Sullivan Polk
YAVAPAI COUNTY ATTORNEY

16
17 By: 
18 Joseph C. Butner
Deputy County Attorney
19

20 COPIES of the foregoing delivered this
21 11th day of May, 2010 to:

22 Honorable Thomas J. Lindberg
23 Division 6
24 Yavapai County Superior Court
(via email)

25 John Sears
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